

SCHUMER (for Ms. SINEMA (for herself, Mr. PORTMAN, Mr. MANCHIN, Mr. CASIDY, Mrs. SHAHEEN, Ms. COLLINS, Mr. TESTER, Ms. MURKOWSKI, Mr. WARNER, and Mr. ROMNEY)) to the bill H.R. 3684, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 507, lines 4 and 5, strike “and the Federal System Funding Alternative Advisory Board established under section 13002(g)(1)”.

On page 507, lines 11 and 12, strike “and the national pilot program under section 13002”.

On page 508, lines 1 and 2, strike “to the national pilot program under section 13002 or”.

Strike section 13002.

**SA 2435.** Mr. GRASSLEY (for himself and Mr. LEAHY) submitted an amendment intended to be proposed to amendment SA 2137 proposed by Mr. SCHUMER (for Ms. SINEMA (for herself, Mr. PORTMAN, Mr. MANCHIN, Mr. CASIDY, Mrs. SHAHEEN, Ms. COLLINS, Mr. TESTER, Ms. MURKOWSKI, Mr. WARNER, and Mr. ROMNEY)) to the bill H.R. 3684, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end of division G, insert the following:

## **TITLE XII—ANTI-FRAUD AMENDMENTS ACT**

### **SEC. 71201. SHORT TITLE.**

This title may be cited as the “Anti-Fraud Amendments Act”.

#### **Subtitle A—False Claims Procedures**

### **SEC. 71201. FALSE CLAIMS PROCEDURE.**

(a) **PROVING MATERIALITY.**—Section 3729 of title 31, United States Code, is amended by adding at the end the following:

“(e) **PROVING MATERIALITY.**—

“(1) **IN GENERAL.**—In an action under this section, the Government or relator may establish materiality by a preponderance of the evidence.

“(2) **REBUTTAL.**—A defendant may rebut evidence of materiality under paragraph (1) only by clear and convincing evidence that the Government regards the matter as immaterial.”.

(b) **COSTS.**—Section 3731 of title 31, United States Code, is amended by adding at the end the following:

“(f) If the Government elects not to intervene in an action brought under section 3730(b), the court shall, upon a motion by the Government, order the requesting party to pay the Government’s expenses, including costs and attorneys’ fees, for responding to the party’s discovery requests, unless the party can demonstrate that the information sought is relevant and proportionate to the needs of the case.”.

### **SEC. 71202. RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.**

Section 3730(c)(2)(A) of title 31, United States Code, is amended by inserting before the period at the end the following: “, at which the Government shall have the burden of demonstrating reasons for dismissal, and the qui tam plaintiff shall have the opportunity to show that the reasons are fraudulent, arbitrary and capricious, or contrary to law”.

### **SEC. 71203. POST-EMPLOYMENT WHISTLE-BLOWER RETALIATION.**

Section 3730(h)(1) of title 31, United States Code, is amended by inserting “current or former” after “Any”.

### **SEC. 71204. GAO REPORT.**

Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the effectiveness of the False Claims Act (31 U.S.C. 3729 et seq.) during the time period beginning on the date of enactment of the False Claims Amendments Act of 1986 (Public Law 99-562; 100 Stat. 3153) and ending on the date of enactment of this Act, which shall include—

(1) a description of the benefits and challenges of enforcement efforts under the False Claims Act (31 U.S.C. 3729 et seq.); and

(2) information on the amounts recovered by the Government under the False Claims Act since the date of enactment of the False Claims Amendments Act of 1986 (Public Law 99-562; 100 Stat. 3153).

### **SEC. 71205. APPLICABILITY.**

The amendments made by sections 71201, 71202, and 71203 of this Act shall apply to any case under the False Claims Act (31 U.S.C. 3729 et seq.) that is—

(1) filed on or after the date of enactment of this Act; or

(2) pending on the date of enactment of this Act.

#### **Subtitle B—Administrative False Claims**

### **SEC. 71211. ADMINISTRATIVE FALSE CLAIMS.**

(a) **CHANGE IN SHORT TITLE.**—

(1) **IN GENERAL.**—Subtitle B of title VI of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99-509; 100 Stat. 1934) is amended—

(A) in the subtitle heading, by striking “**Program Fraud Civil Remedies**” and inserting “**Administrative False Claims**”; and

(B) in section 6101 (31 U.S.C. 3801 note), by striking “**Program Fraud Civil Remedies Act of 1986**” and inserting “**Administrative False Claims Act**”.

(2) **REFERENCES.**—Any reference to the Program Fraud Civil Remedies Act of 1986 in any provision of law, regulation, map, document, record, or other paper of the United States shall be deemed a reference to the Administrative False Claims Act.

(b) **REVERSE FALSE CLAIMS.**—Chapter 38 of title 31, United States Code, is amended—

(1) in section 3801(a)(3), by amending subparagraph (C) to read as follows:

“(C) made to an authority which has the effect of concealing or improperly avoiding or decreasing an obligation to pay or transmit property, services, or money to the authority.”; and

(2) in section 3802(a)(3)—

(A) by striking “An assessment” and inserting “(A) Except as provided in subparagraph (B), an assessment”; and

(B) by adding at the end the following:

“(B) In the case of a claim described in section 3801(a)(3)(C), an assessment shall not be made under the second sentence of paragraph (1) in an amount that is more than double the value of the property, services, or money that was wrongfully withheld from the authority.”.

(c) **INCREASING DOLLAR AMOUNT OF CLAIMS.**—Section 3803(c) of title 31, United States Code, is amended—

(1) in paragraph (1) by striking “\$150,000” each place that term appears and inserting “\$1,000,000”; and

(2) by adding at the end the following:

“(3) **ADJUSTMENT FOR INFLATION.**—The maximum amount in paragraph (1) shall be adjusted for inflation in the same manner and to the same extent as civil monetary penalties under the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note).”.

(d) **RECOVERY OF COSTS.**—Section 3806(g)(1) of title 31, United States Code, is amended to read as follows:

“(1)(A) Except as provided in paragraph (2)—

“(i) any amount collected under this chapter shall be credited first to reimburse the authority or other Federal entity that expended costs in support of the investigation or prosecution of the action, including any court or hearing costs; and

“(ii) amounts reimbursed under clause (i) shall—

“(I) be deposited in—

“(aa) the appropriations account of the authority or other Federal entity from which the costs described in subparagraph (A) were obligated;

“(bb) a similar appropriations account of the authority or other Federal entity; or

“(cc) if the authority or other Federal entity expended nonappropriated funds, another appropriate account; and

“(II) remain available until expended.

“(B) Any amount remaining after reimbursements described in subparagraph (A) shall be deposited as miscellaneous receipts in the Treasury of the United States.”.

(e) **SEMIANNUAL REPORTING.**—Section 5(b) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (4), by striking “and” at the end;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

“(5) information relating to cases under chapter 38 of title 31, United States, including—

“(A) the number of reports submitted by investigating officials to reviewing officials under section 3803(a)(1) of title 31, United States Code;

“(B) actions taken in response to reports described in subparagraph (A), which shall include statistical tables showing—

“(i) pending cases;

“(ii) resolved cases;

“(iii) the average length of time to resolve each case;

“(iv) the number of final agency decisions that were appealed to a district court of the United States or a higher court; and

“(v) if the total number of cases in a report is greater than 2—

“(I) the number of cases that were settled; and

“(II) the total penalty or assessment amount recovered in each case, including through a settlement or compromise; and

“(C) instances in which the reviewing official declined to proceed on a case reported by an investigating official; and”.

(f) **INCREASING EFFICIENCY OF DOJ PROCESSING.**—Title 31, United States Code, is amended—

(1) in section 3803(j)—

(A) by inserting “(1)” before “The reviewing”; and

(B) by adding at the end the following:

“(2) A reviewing official shall notify the Attorney General in writing not later than 30 days before entering into any agreement to compromise or settle allegations of liability under section 3802 of this title and before the date on which the reviewing official is permitted to refer allegations of liability to a presiding officer under subsection (b).”; and

(2) in section 3812—

(A) in the section heading, by striking “**Prohibition against delegation**” and inserting “**Delegation authority**”; and

(B) by striking “, shall not be delegated to, or carried out by,” and inserting “may be delegated to”.

(g) **REVISION OF DEFINITION OF HEARING OFFICIALS.**—

(1) IN GENERAL.—Chapter 38 of title 31, United States Code, is amended—

(A) in section 3801(a)(7)—

(i) in subparagraph (A), by striking “or” at the end;

(ii) in subparagraph (B)(vii), by adding “or” at the end; and

(iii) by adding at the end the following:

“(C) a member of the board of contract appeals pursuant to section 7105 of title 41, if the authority does not employ an available presiding officer under subparagraph (A);”;

and

(B) in section 3803(d)(2)—

(i) in subparagraph (A), by striking “and” at the end;

(ii) in subparagraph (B)—

(I) by striking “the presiding” and inserting “(1) in the case of a referral to a presiding officer described in subparagraph (A) or (B) of section 3801(a)(7), the presiding”;

(II) in clause (i), as so designated, by adding “or” at the end; and

(III) by adding at the end the following:

“(ii) in the case of a referral to a presiding officer described in subparagraph (C) of section 3801(a)(7)—

“(I) the reviewing official shall submit a copy of the notice required by under paragraph (1) and of the response of the person receiving such notice requesting a hearing—

“(aa) to the board of contract appeals that has jurisdiction over matters arising from the agency of the reviewing official pursuant to section 7105(e)(1) of title 41; or

“(bb) if the Chair of the board of contract appeals declines to accept the referral, to any other board of contract appeals; and

“(II) the reviewing official shall simultaneously mail, by registered or certified mail, or shall deliver, notice to the person alleged to be liable under section 3802 that the referral has been made to an agency board of contract appeals with an explanation as to where the person may obtain the relevant rules of procedure promulgated by the board.”; and

(iii) by adding at the end the following:

“(C) in the case of a hearing conducted by a presiding officer described in subparagraph (C) of section 3801(a)(7)—

“(i) the presiding officer shall conduct the hearing according to the rules and procedures promulgated by the board of contract appeals; and

“(ii) the hearing shall not be subject to the provisions in subsection (g)(2), (h), or (i).”.

(2) AGENCY BOARDS.—Section 7105(e) of title 41, United States Code, is amended—

(A) in paragraph (1), by adding at the end the following:

“(E) ADMINISTRATIVE FALSE CLAIMS ACT.—

“(i) IN GENERAL.—The boards described in subparagraphs (B), (C), and (D) shall have jurisdiction to hear any case referred to a board of contract appeals under section 3803(d) of title 31.

“(ii) DECLINING REFERRAL.—If the Chair of a board described in subparagraph (B), (C), or (D) determines that accepting a case under clause (i) would prevent adequate consideration of other cases being handled by the board, the Chair may decline to accept the referral.”; and

(B) in paragraph (2), by inserting “or, in the event that a case is filed under chapter 38 of title 31, any relief that would be available to a litigant under that chapter” before the period at the end.

(3) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, each authority head, as defined in section 3801 of title 31, United States Code, and each board of contract appeals of a board described in subparagraphs (B), (C), and (D) of section 7105(e) of title 41, United States Code, shall amend procedures regarding proceedings as

necessary to implement the amendments made by this subsection.

(h) REVISION OF LIMITATIONS.—Section 3808 of title 31, United States Code, is amended by striking subsection (a) and inserting the following:

“(a) A notice to the person alleged to be liable with respect to a claim or statement shall be mailed or delivered in accordance with section 3803(d)(1) of this title not later than the later of—

“(1) 6 years after the date on which the violation of section 3802 of this title is committed; or

“(2) 3 years after the date on which facts material to the action are known or reasonably should have been known by the authority head, but in no event more than 10 years after the date on which the violation is committed.”.

(i) DEFINITIONS.—Section 3801 of title 31, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (8), by striking “and” at the end;

(B) in paragraph (9), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(10) ‘material’ has the meaning given the term in section 3729(b) of this title; and

“(11) ‘obligation’ has the meaning given the term in section 3729(b) of this title.”; and

(2) by adding at the end the following:

“(d) For purposes of subsection (a)(10), materiality shall be determined in the same manner as under section 3729 of this title.”.

(j) PROMULGATION OF REGULATIONS.—Not later than 180 days after the date of enactment of this Act, each authority head, as defined in section 3801 of title 31, United States Code, shall—

(1) promulgate regulations and procedures to carry out this subtitle and the amendments made by this subtitle; and

(2) review and update existing regulations and procedures of the authority to ensure compliance with this subtitle and the amendments made by this subtitle.

**SA 2436.** Ms. ERNST submitted an amendment intended to be proposed to amendment SA 2137 proposed by Mr. SCHUMER (for Ms. SINEMA (for herself, Mr. PORTMAN, Mr. MANCHIN, Mr. CASSIDY, Mrs. SHAHEEN, Ms. COLLINS, Mr. TESTER, Ms. MURKOWSKI, Mr. WARNER, and Mr. ROMNEY)) to the bill H.R. 3684, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII of division B, add the following:

**SEC. 27005. REPORT ON CERTAIN USES OF FEDERAL FUNDS.**

(a) DEFINITIONS.—In this section:

(1) DEPARTMENT PROVIDED FUNDS.—The term “Department provided funds” means—

(A) amounts provided by the Department as financial assistance or pursuant to a financial assistance agreement; and

(B) amounts provided by the Department to any employee of the Department, including wages, benefits, and any other compensation.

(2) FINANCIAL ASSISTANCE.—The term “financial assistance” includes grants, subgrants, contracts, cooperative agreements, and any other form of financial assistance.

(3) REPORTABLE NONWORKING TIME.—The term “reportable nonworking time” means any time—

(A) during which an employee is not working; and

(B) for which the employee receives from the Department or an individual or entity

employing the employee standby pay or any other form of payment or compensation from Department provided funds.

(b) REPORTS.—

(1) ANNUAL REPORT TO THE SECRETARY.—Not later than 60 days after the last day of each fiscal year, each individual or entity that receives Department provided funds under this Act or any other law during that fiscal year shall submit to the Secretary a report describing all reportable nonworking time of the employees of the individual or entity during that fiscal year, including, with respect to each project associated with that reportable nonworking time—

(A) the name and location of the project;

(B) the number of employees compensated for reportable nonworking time;

(C) the reason why each such employee was not working;

(D) the quantity of reportable nonworking time for which each such employee was compensated; and

(E) the amount of Department provided funds expended to compensate each such employee for reportable nonworking time.

(2) ANNUAL REPORT TO CONGRESS.—Not later than 90 days after the last day of each fiscal year, the Secretary shall submit to Congress a report describing—

(A) the information submitted to the Secretary under paragraph (1); and

(B) all reportable nonworking time of the employees of the Department during that fiscal year, including information pertaining to—

(i) each of the matters described in subparagraphs (B) through (E) of paragraph (1); and

(ii) if the reportable nonworking time is associated with a project, the name and location of the project.

(c) GUIDANCE.—Not later than 120 days after the date of enactment of this Act, the Secretary, in consultation with the Director of the Office of Management and Budget, shall issue guidance to assist individuals and entities in determining whether an employee—

(1) is not working for purposes of subsection (a)(3)(A); and

(2) has received payment or compensation from Department provided funds for purposes of subsection (a)(3)(B).

**SA 2437.** Mr. COTTON submitted an amendment intended to be proposed to amendment SA 2137 proposed by Mr. SCHUMER (for Ms. SINEMA (for herself, Mr. PORTMAN, Mr. MANCHIN, Mr. CASSIDY, Mrs. SHAHEEN, Ms. COLLINS, Mr. TESTER, Ms. MURKOWSKI, Mr. WARNER, and Mr. ROMNEY)) to the bill H.R. 3684, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 2092, strike line 18 and all that follows through page 2093, line 10, and insert the following:

(8) COVERED POPULATIONS.—The term “covered populations”—

(A) means—

(i) individuals who live in covered households;

(ii) aging individuals;

(iii) incarcerated individuals, other than individuals who are incarcerated in a Federal correctional facility;

(iv) veterans;

(v) individuals with disabilities;

(vi) individuals with a language barrier, including individuals who—

(I) are English learners; and

(II) have low levels of literacy;